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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

CASE NO. 19-30088 (DM)
Chapter 11

**PRICEWATERHOUSECOOPERS
LLP'S NOTICE OF MOTION AND
MOTION FOR STAY PENDING
APPEAL; MEMORANDUM OF
POINTS AND AUTHORITIES**

1 **TO THE CLERK OF THE BANKRUPTCY COURT; THE HONORABLE**
2 **DENNIS MONTALI, U.S. BANKRUPTCY JUDGE; THE UNITED STATES**
3 **DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA; AND ALL**
4 **PARTIES IN INTEREST:**

5 PLEASE TAKE NOTICE that PricewaterhouseCoopers LLP ("PwC") hereby
6 respectfully moves the Bankruptcy Court pursuant to Federal Rules of Bankruptcy
7 Procedure Rule 8007 for a stay from the Court's Order entered August 24, 2021 (the
8 "Order") compelling PwC's compliance with a Rule 2004 Subpoena in relation to
9 the General Rate Case documents in the above-captioned proceeding.

10
11 This motion is based on this Notice of Motion and Motion, the attached
12 Memorandum of Points and Authorities, the Appendix of Exhibits in Support of
13 Motion for Leave to Appeal filed herewith, including the Order and the letter briefs
14 relating thereto, the Notice of Appeal and Statement of Election filed concurrently
15 with this Motion, all other pleadings and papers on file with the Court, and such
16 other evidence and argument as may be presented at or before any hearing or ruling
17 on this motion.

1 Dated: September 7, 2021

KIBLER FOWLER & CAVE LLP

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PRICEWATERHOUSECOOPERS LLP'S NOTICE OF MOTION AND MOTION FOR STAY PENDING APPEAL

1

MEMORANDUM OF POINTS AND AUTHORITIES

2

I. INTRODUCTION

3 Pursuant to Federal Rules of Bankruptcy Procedure (“FRBP”) Rule 8007,
4 PricewaterhouseCoopers LLP (“PwC”) respectfully requests that this Court issue a
5 stay as to the Bankruptcy Court’s Order dated August 24, 2021 (the “Order”)
6 compelling PwC’s compliance with a Rule 2004 Subpoena within twenty-one days
7 of a meet and confer between the parties. The Order should be stayed pending
8 appeal so that PwC can seek appellate review without having to simultaneously
9 search for, review for privilege, and produce documents that may ultimately not
10 need to be produced at all. Staying the Order will not prejudice the Trustee or harm
11 the public, and PwC will suffer irreparable injury if the Order is not stayed.
12

14 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

15 **A. PG&E’s Chapter 11 Bankruptcy and the Reorganization Plan**

16 On January 29, 2019, PG&E Corporation (“PG&E Corp.”) and its primary
17 operating subsidiary, Pacific Gas and Electric Company (the “Utility”; together with
18 PG&E Corp., “PG&E”), filed voluntary Chapter 11 petitions in the United States
19 Bankruptcy Court for the Northern District of California. PG&E’s cases have been
20 assigned to Judge Dennis Montali jointly under Case No. 19-30088.

22 On June 20, 2020, the Court issued an order confirming the Debtors’ and
23 Shareholder Proponents’ Joint Plan of Reorganization Dated June 19, 2020 (the
24 “Plan”). [Dkt. 8048]. The order authorized the Plan proponents to establish a trust
25

1 (the “Fire Victim Trust”) to administer, process, settle, resolve, liquidate, satisfy,
2 and pay all claims of fire victims. In addition, Debtors assigned to the Fire Victim
3 Trust very limited rights and specific potential causes of action against third parties.
4

5 *Id.* Section 1.8 of the Plan provides:

6 **Assigned Rights and Causes of Action** means any and all
7 rights, claims, causes of action, and defenses *related thereto*
8 *relating directly or indirectly to any of the Fires* that the
9 Debtors may have against vendors, suppliers, third party
10 contractors and consultants (including those who provided
11 services regarding the Debtors’ electrical system, system
12 equipment, inspection and maintenance of the system, and
13 vegetation management), former directors and officers of
14 the Debtors solely to the extent of any directors and
15 officers’ Side B Insurance Coverage, and others as mutually
16 agreed upon by the Plan Proponents and identified in the
17 Schedule of Assigned Rights and Causes of Action.

18 *Id.*

19 **B. PG&E Assigns Specific Causes of Action to the Fire Victims Trust**

20 The Schedule of Assigned Rights and Causes of Action lays out in further
21 detail what the Debtor assigned to the Fire Victim Trust. The Schedule of Assigned
22 Rights and Causes of Action describes the limited claims assigned to the Trustee to
23 include:

24 [A]ny and all rights, claims, causes of action, and defenses
25 related thereto that arose *prior to the Petition Date [January*
26 *29, 2019]* *relating to the cause of any of the Fires* that the
27 Debtors may have against . . . consultants who performed
28 services before the allegedly relevant fire and where such
29 claims relate to an alleged failure of the . . . consultant to

1 provide the contracted services in the manner required by
2 the applicable contract.

3 [Dkt. 7711-1]. Section 1.86 of the Plan makes abundantly clear that the *only* claims
4 assigned to the Fire Victim Trust are those that relate to conduct prior to January 29,
5 2019, and that relate to *causation* of the “Fires.” And, “Fires” is defined to mean
6 the 2015 Butte Fire, the 2017 North Bay Wildfires, and the 2018 Camp Fire. [Dkt.
7 8048].

8 **C. The Rule 2004 Subpoena**

9 On March 17, 2020, the Official Committee of Tort Claimants (“TCC”)
10 issued a Rule 2004 Subpoena to PwC (the “Subpoena”). On July 22, 2020, the
11 Court ordered that the Fire Victim Trust, through its Trustee, would assume the
12 Official Committee of Tort Claimants’ rights and responsibilities with respect to
13 enforcement of the Subpoena. [Dkt. 8480].

14 The Subpoena, on its face, requests documents far beyond those that could
15 relate to wildfire causation—the only claims that the Debtor assigned to the Trust—
16 and includes documents that constitute or memorialize “reports, analyses,
17 summaries, or descriptions of [PwC’s] work for PG&E” for the time period January
18 1, 2013, to March 17, 2020. [Dkt. 6351-2]. On April 9, 2020, PwC served written
19 objections to the Subpoena, pointing out the extraordinary breadth of the Subpoena
20 as well as issues of undue burden and privilege. Since then, PwC has made a total
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1 of eight document productions to the Trustee containing nearly two thousand pages
2 of contracts, policies, and deliverables.

3 The parties continued to meet and confer with respect to PwC's responses and
4 objections to the Subpoena, which resulted in a number of discovery conferences
5 before the Court. On August 11, 2021, the Court issued an Order Compelling
6 PricewaterhouseCoopers LLP's Compliance with Rule 2004 Subpoena (the "August
7 11 Order"). The August 11 Order required PwC to produce certain categories of
8 documents and it also directed the Trustee and PwC to submit letter briefs setting
9 forth their respective positions as to the Trustee's request for PwC's deliverables
10 "relating to the General Rate Case, meaning PwC's work product generated in
11 connection with that engagement, including advice, recommendations, analysis,
12 and/or reports to PG&E, during the time period 2013 through March 17, 2020."
13 [Dkt. 11055].

14 **D. The Court's Order Regarding the General Rate Case**

15 The Trustee and PwC submitted letter briefs on August 19, 2021, outlining
16 their respective positions regarding the Trustee's request for PwC deliverables
17 related to the General Rate Case. PwC argued that the Trustee's demand should be
18 denied because the information sought did not relate in any way to causation of the
19 wildfires at issue, noting that for the past year the Trustee himself has defined the
20 scope of the Rule 2004 Subpoena this way. [Dkt. 11133]. The Trustee did not
21 dispute that the scope of its claims was limited to those relating to the cause of any
22 wildfire. [Dkt. 11133]. The Trustee's letter brief also asserted that the
23 information sought by the Subpoena was protected by attorney-client privilege.
24 [Dkt. 11133]. The Trustee did not dispute that the scope of its claims was limited to those relating to the cause of any
25 wildfire. [Dkt. 11133]. The Trustee's letter brief also asserted that the information sought by the Subpoena was protected by attorney-client privilege.
[Dkt. 11133].

1 of the wildfires, but instead argued that the scope of discovery is “not limited to only
2 those documents known to be admissible in some future proceeding.” [Dkt. 11109].
3

4 On August 24, 2021, after reviewing the parties’ submitted letter briefs, the
5 Court issued an Order Compelling PricewaterhouseCoopers LLP’s Compliance with
6 Rule 2004 Subpoena In Relation to the General Rate Case Documents (the “Order”).
7 [Dkt. 11145].

8 In the Order, the Court stated its disagreement with PwC’s contention that
9 “the Trustee should not be allowed to obtain information unless relating in any way
10 to ‘causation’ of the wildfires.” Although the Court expressly referenced Section
11 1.8 of the Plan in the Order, it did not reference the Schedule of Assigned Rights
12 and Causes of Action, which expressly limits the claims assigned by PG&E to the
13 Trustee to only those “that arose prior the Petition Date *relating to the cause of any*
14 *of the Fires.*” (emphasis added.)

16 The Court appears to have mistakenly interpreted PwC’s argument as being
17 one of “you won’t find anything so I don’t have to give it to you,” rather than PwC’s
18 actual position: that the bounds of permissible discovery, even in the Rule 2004
19 context, are circumscribed by the potential claims relating to causation of the
20 wildfires, consistent with the Schedule of Assigned Rights and Causes of Action.
21 [See Dkt. 11145].

1 **III. ARGUMENT**

2 **A. Legal Standard**

3 Under FRBP Rule 8007, a motion for a stay of a Bankruptcy Court's order
4 must ordinarily be presented to the Bankruptcy Court in the first instance. The
5 Bankruptcy Court may suspend or order the continuation of other proceedings in the
6 case or issue any other appropriate orders during the pendency of an appeal to
7 protect the rights of all parties in interest. FRBP Rule 8007(e).

8 The standard for granting a stay pending appeal is the same as that for
9 granting a preliminary injunction. *See In re Wymer*, 5 B.R. 802, 806 (B.A.P. 9th
10 Cir. 1980). The party seeking such relief must show that: (1) it is "likely to succeed
11 on the merits of the appeal;" (2) it will "suffer irreparable injury" absent a stay; (3) a
12 stay will not cause "substantial harm" to other interested parties; and (4) a stay "will
13 do no harm to the public interest." *Id.*; *see also In re Byrd*, 172 B.R. 970, 974
14 (Bankr. W.D. Wash. 1994) (citing *Schwartz v. Covington*, 341 F.2d 537 (9th Cir.
15 1965)).

16 **B. A Stay of the Order Is Appropriate**

17 1. *PwC Has Presented a Strong Likelihood of Success on the Merits*

18 As detailed above, PwC has a strong likelihood of success on the merits
19 because the Order directly contradicts the Schedule of Assigned Rights and Causes
20 of Action by expanding the scope of discovery to include discovery of potential
21

1 claims that were *not* assigned to the Trustee (*i.e.*, claims that do not in any way
2 relate to causation of the wildfires).

3 2. *PwC Will Suffer Irreparable Injury Absent a Stay*

4
5 If a stay is not entered and PwC is forced to proceed with searching for and
6 producing information pursuant to the Order, it is likely that PwC would comply
7 with the Order prior to resolution of PwC's appeal, thus in effect mooted the
8 appeal. Because this issue of scope is likely to come up again in further discovery
9 disputes, having its appeal mooted could irreparably injure PwC and limit its ability
10 to advance its position in future disputes. Further, PwC will be unable to recover
11 the significant costs and resources expended in responding to the Trustee's demand
12 in the event that PwC prevails on its appeal. The Court should stay the Order to
13 avoid such potentially unnecessary burden on PwC.

14 3. *A Stay Will Not Cause Substantial Harm to the Trustee*

15
16 The Trustee will not be substantially harmed by a stay of the Order, as the
17 parties are engaged in other discovery activities. In fact, PwC recently produced to
18 the Trustee a list of its contracts related to services provided to PG&E, and the
19 parties are planning to meet and confer on the substance of that list. PwC also
20 recently produced certain deliverables in response to the Rule 2004 Subpoena.
21 Staying the Order with respect to the General Rate Case documents while the issue
22 of the Trustee's scope of permissible discovery is determined will not delay the
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24

1 parties' discussion of other issues, and the Trustee has not articulated any basis of
2 substantial harm if the Order is stayed.

3 4. *A Stay Will Do No Harm to the Public Interest*

5 The public interest will not be implicated if the Order is stayed pending
6 resolution of PwC's submitted appeal. If anything, the public may be better served
7 by staying the Order as it will reduce the amount of judicial resources expended in
8 dealing with any potential disputes pertaining to PwC's compliance with the Order,
9 and staying the Order will allow the parties to more efficiently brief and resolve
10 PwC's appeal.

11 **C. PwC Should Not Be Required to Post a Bond**

12 PwC should not be required to post a bond as a condition of granting its
13 requested stay pending appellate review.

14 FRBP Rule 8007 allows the Court to condition a stay pending appeal on the
15 filing of a bond. The purpose of imposing a bond is "to protect the adverse party
16 from potential losses resulting from the stay." *See In re United Merchs. & Mfrs.,*
17 *Inc.*, 138 B.R. 426, 430 (D. Del. 1992). The Court has "wide discretion in the
18 matter of requiring security and if there is an absence of proof showing a likelihood
19 of harm, certainly no bond is necessary." *Cont'l Oil Co. v. Frontier Ref. Co.*, 338
20 F.2d 780, 782 (10th Cir. 1964); *see also Nordhoff Investments, Inc. v. Zenith Elecs.*
21 *Corp.*, 258 F.3d 180, 191 (3d Cir. 2001). Generally, a bond is only necessary where
22 the stay is "likely to cause harm by diminishing the value of an estate or
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1 ‘endangering [the non-moving parties’] interest in the ultimate recovery.’” *See In re*
2 *Adelphia Commc'ns Corp.*, 361 B.R. 337, 368 (S.D.N.Y. 2007).

3 No bond is necessary here because no substantial harm will come to the
4 Trustee or to the public as a result of the stay. *See In re Finova Group, Inc.*, 2007
5 WL 3238764, at *2 (D. Del. Oct. 3, 2007) (refusing to require bond where “no
6 substantial harm will come to the Debtors as a result of this stay”). A stay seeks to
7 maintain the status quo and preserve funds or the rights of the parties until after an
8 appeal is decided. Here, a stay of the Order until after the appeal is decided will
9 have no effect on any funds or rights of the parties in the interim; therefore, the
10 parties will not suffer any harm by virtue of a stay. Therefore, a bond is
11 unnecessary.
12

14 **IV. CONCLUSION AND RELIEF SOUGHT**

15 For all of the reasons set forth above, PwC asks that this Court grant its
16 motion for a stay of its Order pending resolution of PwC’s appeal to the District
17 Court.
18

1 Dated: September 7, 2021

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